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Raised Bill 1192
Public Hearing: 3-21-11

TO: MEMBERS OF JUDICIARY COMMITTEE
FROM: CONNECTICUT TRIAL LAWYERS ASSOCIATION (CTLA) LEW CHSMES
DATE: MARCH 21, 2011

RE: **SUPPORT FOR AN ACT CONCERNING THE PROCESSING OF
COMPLAINTS WITHIN THE COMMISSION ON HUMAN RIGHTS AND
OPPORTUNITIES.**

The Connecticut Trial Lawyers Association support the intent of RB 1192, which is to expedite the processing of complaints by the Commission of Human Rights and Opportunities. This bill will hopefully speed up the processing of complaints that are filed with the Commission on Human Rights and Opportunities. This will benefit both complainants and respondents.

If, however, this acceleration of the process is done without improving the oversight of the processing of these complaints, many complaints could dismissed without adequate investigation. The Connecticut Trial Lawyers suggest that the Judiciary Committee look at this bill in conjunction with some of the proposals that have been made in RB 6595, which was raised in the Appropriations Committee. RB 6595 bill proposes some substantive changes that will improve the processing of complaints by the Commission on Human Rights and Opportunities. That Bill provides for increased review by staff attorneys at an earlier stage of the proceedings. In addition, it authorizes the award of attorney's fees in proceedings before the Commissions, which will make it easier for complainants to obtain attorneys for complaints filed with the commission.

The twin goals of expediting the processing of complaints by the Commission and improving the quality of the complaint processing by the commission would be best served by early release of those complaints that are going to be litigated in court.

The Connecticut Fair employment Practices Act provides alternative remedies: a victim of discrimination in the workplace can choose to litigate his case at an administrative hearing before the Commission. Alternatively, they have a right to have their case heard by a jury in court.

Under the current structure, an individual seeking to bring their claim in court has to wait 210 days before obtaining a release from the CHRO to go to court. Every year approximately 250 – 350 releases are granted by the CHRO for Fair employment claims that will be brought in court. This constitutes about 10-15 % of the total number of cases filed with the CHRO.

The CTLA strongly advocates supplementing RB 1192, with the attached provision, which would allow those individuals who intend to bring their claims to court to withdraw their claims from the CHRO after 90 days. RB 1192 would speed up internal complaints within the CHRO; the CTLA's addendum would speed up the processing of those cases that will be litigated in court.

A. The Current Statutes Make An Individual Seeking to Go to Court Wait 210 Days

Under the current Fair Employment Practices Act ("FEPA"), an individual who brings a claim of discrimination must initiate their complaint with the CHRO. The claim must be filed within 180 days of the last discriminatory act. The individual then has the option of pursuing their claim administratively, through the CHRO process, or by asking for a release of jurisdiction from the CHRO and bringing their claims in court. If the individual wants to go to court, he has to wait 210 days (7 months) before they can ask for a release and then file their claim in court.

According to the CHRO's annual reports, releases are granted in approximately 10-15% of their cases (270-340) each year.

B. The CHRO Is Not An Attractive Forum For Litigating Certain Discrimination Claims

Although the CHRO administrative process may be a more cost effective process for resolving simple pro se cases, it is not an option for more complex cases and for individuals who are represented by counsel. There are many reasons for this:

1. **Lack of Administrative Remedies:** An individual is not entitled to damages for emotional distress, punitive damages, and attorney's fees in the CHRO.¹ A prevailing victim of discrimination in a jury trial is entitled to these broader remedies.

2. **Lack of Meaningful Discovery Process:** Unlike personal injury or contract claims, proof of discriminatory intent is generally circumstantial. This usually requires the individual to obtain access to their employer's personnel policies and information. The CHRO lacks the ability to obtain the necessary discovery from an employer. In contrast, the court allows a victim of discrimination to obtain testimony and relevant documents through its discovery process.

3. **Jury Trial:** Our legislature has given victims of discrimination the right to a trial by jury. The prospect of facing a jury trial is probably the strongest incentive for recalcitrant employers to resolve discrimination cases.

C. The Current Process Imposes Additional Costs on Both Individuals and Employers

The current CHRO filing requirement and 210 day waiting period for those cases going to

¹ *Bridgeport Hospital v. CHRO*, 232 Conn. 91 (1995); *CHRO v. Truelove and McLean, Inc.*, 238 Conn. 337 (1996)

court only creates an additional and unnecessary layer of litigation for employers and employees. During that 210 day period, the employer and employee will often “litigate” the Merit Assessment Review process. This process is not dispositive; if the employer prevails on getting the case dismissed on Merit Review, the individual can still go to court. It is an unnecessary and additional cost for both the individual and the employer.

D. The 210 Day Delay Imposes an Additional Burden on Victims of Discrimination

Many victims of employment discrimination are in dire straits; they are unemployed and facing the prospect of serious financial hardship. The seven month delay before they can file their case delays resolution of their claims, and exacerbates their personal situation. Often, these are individuals who least equipped to endure this additional delay.

E. Removing the 210 Day Waiting Period Will Lessen the CHRO’s Caseload

The number of cases in which the CHRO grants releases to go to court is relatively small compared to the CHRO’s overall caseload.² Permitting these cases to go to court more expeditiously will allow the CHRO to focus its resources more efficiently on those cases that remain under its jurisdiction and will be resolved administratively.

²

CHRO Caseload/Number of Cases Released to Court

<u>Year</u>	<u>Total # Cases Filed</u>	<u># Releases Granted</u>
2002-3	2211	282
2003-4	2236	273
2004-5	2057	334
2005-6	1968	344
2006-7	1783	318
2007-8	1814	291
2008-9	1716	310

CTLA's added provision has numerous benefits:

- (1) It will allow these cases to be resolved more efficiently, saving time and money for individual employees and their employers.
- (2) It also will reduce the case load and burden on the Commission of Human Rights and Opportunities ("CHRO"), saving money for the state.
- (3) The cases affected by this Act are the same cases which ultimately are filed in court after the 210 day waiting period in the Commission. In addition, many of these cases ultimately end up in federal court. Thus, the Act will not increase the volume of cases filed in the courts, only the timing of when they are filed.

RB 1192 and CTLA's proposed addendum are both practical bills that will allow those discrimination cases that are going to go to be processed by the CHRO and those that are going to be litigated in court to be resolved in a more efficient manner. The state, the individual, and employers will all save money.

RB 1192 and the CTLA's proposed addition will both expedite processing of discrimination complaints .

Connecticut General Statutes Section 46a-101 shall be amended as follows:

(a) No action may be brought in accordance with section 46a-100 unless the complainant has received a release from the commission in accordance with the provisions of this section.

(b) The complainant [and the respondent, by themselves] or **his or her** [their] attorney[s,] may [jointly] request that the complainant receive a release from the commission [at any time from] **ninety days after** the date of filing the complaint. [until the expiration of two hundred ten days from] **after** the date of filing of the complaint. The complainant, or his attorney, may request a release from the commission if his complaint with the commission is still pending after the expiration of two hundred ten days from the date of its filing.]

(c) The executive director of the commission shall grant a release, allowing the complainant to bring a civil action, within ten business days after receipt of the request for the release, except that if a case is scheduled for public hearing, the executive director may decline to issue a release. The commission may defer acting on a request for a release for thirty days if the executive director of the commission, or his designee, certifies that he has reason to believe that the complaint may be resolved within that period.

(d) Upon granting a release, the commission shall dismiss or otherwise administratively dispose of the discriminatory practice complaint pending with the commission without cost or penalty assessed to any party.

(e) Any action brought by the complainant in accordance with section 46a-100 shall be brought within ninety days of the receipt of the release from the commission.